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on NOVEMBER 8, 2004

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NOVEMBER 8, 2004
Date of Signature

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Customer Number:	000201
Attorney Docket No.:	**J6610(C)**
Appellant:	Hawkins et al.
Serial No.:	09/848,883
Filed:	May 4, 2001
FOR:	METHOD OF EVALUATING COSMETIC PRODUCTS ON A CONSUMER WITH FUTURE PREDICTIVE TRANSFORMATION
	Group: 2621
	Examiner: Dennis Rosario-Vasquez
	Edgewater, New Jersey 07020
	November 5, 2004

BRIEF FOR APPELLANTS

MAIL STOP: Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

There are enclosed herewith three (3) copies of an Appeal Brief for Appellants. Please charge $340.00 to our Deposit Acct. No. 120-1155. An oral hearing is requested herein. Please charge the $300 fee to our Deposit Account No. 12-1155. Please credit any overpayment or charge any additional fees to Deposit Acct. No. 12-1155.

Three copies of this letter are enclosed.

Respectfully submitted,

Milton L. Honig
Registration No. 28,617
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MLH/sm
201-840-2403

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BRIEF FOR APPELLANTS

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Commissioner For Patents
P.O. Box 1450
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Sir:

This is a Brief on appellants' Appeal from the Examiner's Final Rejection concerning the above-identified application.

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I. REAL PARTY IN INTEREST

Unilever Home & Personal Care USA, Division of Conopco, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences or judicial procedures known to appellants, the appellants' legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-6, 8-9 and 11-12 have been canceled. Presently pending are claims 7 and 10.

IV. STATUS OF AMENDMENTS

The amendment filed after final action canceled claims 1-6, 8-9 and 11-12. Appellants are unaware of any refusal by the Examiner to enter cancellation of claims. No presently pending claim was amended after final action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Sole independent claim 7 refers to a method for identifying progress of a cosmetic product treatment upon a consumer. See pages 8-9 under paragraph [00021]. The method comprises seven steps.

Step (i) concerns selecting a cosmetic product for trial on the consumer's body and identifying a body feature being observed over a period of time. Step (ii) concerns capturing an initial image of the body feature. Thereon step (iii) involves displaying the initial image on a monitor.

Step (iv) requires providing an assessment of the initial image based on results of an expert grader study which has calculated consumer perceivable skin attributes on panelists with no treatment/product use. See page 11 (lines 9-10) and page 12 (lines 7-11 and 21-25).

Step (v) recites digitally transforming in a manner reflecting the effect of a recommended cosmetic over a period of time, based upon the assessment, of a property of the body feature of the consumer selected from color, sags, wrinkles, texture, radiance and combinations thereof, and displaying the transformed image tiled beside the initial image. See page 5 (lines 5 and 21-25) and page 9 (lines 25-26).

Step (vi) involves capturing a further image of the body feature at a later time after the product has been applied to the consumer. See page 9 (lines 1-3).

Finally step (vii) recites allowing the consumer to compare results between the captured initial, digitally transformed, and later time captured images. See page 9 (lines 4-5).

Claim 10 depends from claim 7. Therein step (ii) is further defined as performed by use of a digital camera and wherein the captured image is transmitted via Internet. See page 13 (lines 10-11).

VI. GROUNDS OF REJECTION

Are claims 7 and 10 obvious under 35 U.S.C. § 103(a) over Hillebrand et al. (US Patent 6,571,003 B1) in view of Hawkins et al. (Intern. J. of Cos. Science, 21; 159-166 (1991)) and further in view of Bechara et al. (WO 97/29441)?

VII. ARGUMENT

Claim 7 is directed to a method for identifying progress of a cosmetic product treatment. This is not a theoretical exercise to entice a potential consumer into purchase of a particular product that fulfils the promise of a computer simulation. The claimed method requires a step (vi). Therein the consumer is required to actually have applied the product at some point during the method. Subsequent to product application, a further image of the body feature is captured. Thereafter the consumer can compare the captured initial digitally transformed image against that of the later time captured image. Efficacy of the actual product treatment is thereby monitored and factored into the progress of the actual cosmetic product treatment. Validation of the performance of cosmetic products is a significant issue in the industry for which few tools exist.

Neither Hillebrand nor Hawkins nor Bechara teach a method for identifying progress of a cosmetic product treatment which utilizes actual product treatment within the method. Most particularly Hillebrand is merely a simulation of what could happen with the treatment. There is no actual cosmetic treatment. Thus, an actual treatment has not been envisioned by the reference as an integral part of the method. There simply is no validation step. By validation is meant that the consumer can compare actual results to before and track progress in skin health. Progress by the comparison of before versus after is by the present invention an improvement for confirming/validating that the consumer's appearance is moving in the desired direction with a particular treatment technology. For this reason, the combination of art fails to present a prima facie case of obviousness.

There are other distinctions. Hillebrand evaluates based on the results from a population of people. See column 4 (line 46). Comparisons with this population will be dependent on the consumers tested that build up the database. These consumers are not screened for clinically and perceptually-relevant attributes. They are random selections rather than focused ones on a particular attribute of interest. As a consequence, population statistics using the Hillebrand algorithm are gathered for a condition that is not well-focused on the indiscriminantly available population panel.

By contrast, the present invention generates a model for healthy attribute transformations by specifically screening for appropriate consumers. Secondly, they are graded by experts to exhibit a range of healthy skin.

The morphing algorithm of Hillebrand is based on properties of edge enhancement and image blurring to existing "defects" on the skin. By contrast, the nature of the healthy morph models of the present invention are generated from expert systems of healthy skin and predictive transformation of a particular attribute or combination of attributes that can be simulated on a subject that does not currently have the appearance of that particular "defect". For example, a subject with no wrinkles may still be transformed to show a realistic example if wrinkles were to become present on the subject's face. Hillebrand cannot deal with a face that has no initial defect.

Hawkins et al. is concerned with averages and caricatures of subjects with a high and low degree of healthy attribute. These are not focused upon individual subjects or transforms of individual subjects. The reference clearly does not disclose how these transforms would relate a consumer/subject finding their perceptually-relevant preference.

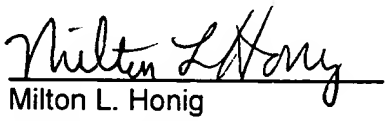
Unlike the present invention, Hawkins et al. does not cover how morphing may be applied for predictive transformations of products. Neither does it describe how these transformations would be made on an individual's own face.

Bechara et al. was introduced for disclosing the tiling feature. The reference discloses tiling different overlays for eyeglasses to select preference. These transformations are discrete, additive transformations. They do not incorporate the (1) multivariate and (2) continuous properties of gradually transforming healthy skin attributes. In order to transform in these multivariate health axes, a greater understanding of the human visual system in terms of thresholds of noticeability and expert (clinical) systems is required. These are deficient in the reference. By contrast, the present invention requires transformation of attributes done through

expert evaluator studies. Perceptual relevance and expert systems are clearly not required for displaying pictures with eyeglasses drawn over the top of a non-transforming human face.

In view of the foregoing comments, the Board of Appeals and Interferences is respectfully requested to reverse the Examiner's rejection of the claims.

Respectfully submitted,



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VIII. CLAIMS APPENDIX

Claim 7. A method for identifying progress of a cosmetic product treatment affect upon a consumer, the affect being personal to that consumer, the method comprising:

(i) selecting a cosmetic product for trial on the consumer's body and identifying a body feature being observed over a period of time;

(ii) capturing an initial image of the body feature;

(iii) displaying the initial image on a monitor;

(iv) providing an assessment of the initial image based on results of an expert grader study which has calculated consumer perceivable skin attributes on panelists with no treatment/product use;

(v) digitally transforming in a manner reflecting the effect of a recommended cosmetic over a period of time, based upon the assessment, of a property of the body feature of the consumer selected from color, sags, wrinkles, texture, radiance and combinations thereof, and displaying the transformed image tiled beside the initial image;

(vi) capturing a further image of the body feature at a later time after the product has been applied by the consumer;

(vii) allowing the consumer to compare results between the captured initial, digitally transformed, and later time captured images.

Claim 10. The method according to claim 7 wherein capturing step (ii) is performed by use of a digital camera and wherein the captured image is transmitted via Internet.